UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 545

Case No. 532: FALLAH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Samar Sen; Mr. Luis de Posadas Montero;

Whereas at the request of Rasmille Fallah, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 September 1988, 30 December 1988, 31 March 1989, 31 May 1989, 30 June 1989, 31 October 1989, 30 November 1989 and 15 December 1989 the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 December 1989, the Applicant filed an application the pleas of which read in part as follows:

"II. PLEAS

7. The Applicant respectfully requests the Administrative Tribunal:

A. Preliminary Measures

(1) To order the Respondent, pursuant to Article 10 of its Rules, to furnish the Applicant with the requisite documents as specified in her three separate requests duly transmitted to the President of the Tribunal, through the Acting Executive Secretary of the Tribunal, by her Counsel, vide his letter of 17 March 1989.

B. Substantive Measures

...

(11) To order the Secretary-General, pursuant to Article 9 of its Statute:

(a) To re-instate the Applicant in an Editorial Assistant post in ORES [Official Records Editing Section] at GS-7 level, retroactive from 1 January 1985, or place her against a GS-7 post in any Editorial Section of a Department or Office in the Secretariat to perform equivalent editorial functions, in view of the fact that the GS-5 post she had held as an Editorial Assistant in ORES had since been classified at the GS-7 level retroactive from 1 January 1985, by virtue of the fact that (1) she had passed the Editorial Assistant's examination with distinction; (2) she had completed 15 out of 24 months of her probationary assignment in ORES; and (3) she had thereafter performed equivalent editorial assistant's functions in Editorial Sections and other offices elsewhere in the Secretariat.

(b) To pay the Applicant a sum equivalent to the difference between the salary at GS-4 level she actually received and the salary she would have received at GS-7 level either in ORES had she remained there until the completion of her 24 months probationary assignment therein, or had she been placed on an equivalent post with comparable editorial functions in any Editorial Section elsewhere in the Secretariat, not only because that is the usual administrative procedure in similar cases, but it is the responsibility of the Administration in the cause of justice and equity.

(c) To pay the Applicant appropriate and adequate compensation for the loss of her SPA [Special Post Allowance] to GS-5 during the period from 1 August 1984 to 31 December 1984, following her return to her parent office in August 1984, or until the classification of her post at GS-7 level retroactive from 1 January 1985, to be

ordered by the Tribunal and implemented by the Respondent pursuant to the Plea under item (a) above.

(12) To award the Applicant appropriate and adequate compensation for severe moral injuries, excruciating pain and physical suffering inflicted upon her as a consequence of the cruel, inhuman and degrading treatment to which she had constantly been subjected by [the Chief of the Official Records Editing Section] with ulterior motives, thereby causing her severe stress related depression, anxieties and insomnia during her probationary assignment in ORES from 1 May 1983 to 31 July 1984 and continuously thereafter. She is still under medical treatment by both doctors for same illness.

(13) To recommend to the Secretary-General to take appropriate disciplinary measures against [the Chief of the Official Records Editing Section] and all other officials who wilfully took arbitrary and capricious actions against the Applicant, in clear abuses of their administrative powers and in wilful violations of her rights under the relevant provisions of the United Nations Charter, Staff Rules and Regulations, Administrative Issuances, Universal Declaration of Human Rights and other relevant international instruments on human rights, as well as Articles 11, 12, 13 and 14 of the Standards of Conduct in the International Civil Service, as strongly recommended by the United Nations Joint Inspection Unit in its Report on the Administration of Justice in the United Nations to the General Assembly at its 41st session (A/41/640, paragraphs 90 and 99).

(14) To hold oral proceedings on the case in order to hear the Applicant and other witnesses concerned, particularly the following:

...

(15) To award the Applicant as cost, the sum of $ 1,500.00."

Whereas the Respondent filed his answer on 7 August 1990;

Whereas, on 28 June 1991, the Applicant amended her pleas as follows:

"(12,a) To fix the amount of compensation for actual, consequential and moral damages to the equivalent of two years net base pay calculated at the GS-7 level together with interest from the period 1 August 1984 to the present."

"(15) To award the Applicant as cost, the sum of $ 3,500.000."

Whereas the Applicant filed written observations on 30 June 1991;

Whereas, on 18 September 1991, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the Tribunal requested additional information from the Respondent on 17 October 1991;

Whereas the Applicant submitted an additional written statement on 22 October 1991;

Whereas the Respondent provided on 28 October 1991 the additional information requested by the Tribunal;

Whereas the Applicant submitted an additional written statement and additional documents on 4 November 1991;

Whereas the facts in the case are as follows:

The Applicant, who had worked for the United Nations from 1965 to 1974 and for a short period in 1976, was re-employed by the Organization on 5 September 1977 under a short-term appointment as a Spanish Conference Typist at the G-3 level. On 28 December 1977 she received a fixed-term appointment for three months at the G-4 level as a Senior Clerk-Typist in the Office of the Director of the Translation Division, Department of Conference Services (DCS). Her appointment was extended from time to time and on 8 January 1980 she was transferred to the Office of the Under-Secretary-General, Department of Public Information (DPI). On 1 September 1980 the Applicant was transferred to the Special Unit on Palestinian Rights, Office of the Under-Secretary-General for Political and General Assembly Affairs (OUSGPGAA) and she was granted a probationary appointment which was converted to a permanent appointment on 1 June 1981.

On 1 May 1983 the Applicant, who had passed the competitive examination for editorial assistants on 14 January 1981 and whose name had been placed on a roster pending the availability of a post, was assigned as

an Editorial Assistant to the Official Records Editing Section, DCS, for a probationary period of two years with a Special Post Allowance to the G-5 level. By a memorandum dated 16 July 1984, however, the Applicant formally requested to be relieved of her duties as Editorial Assistant and to be reassigned to her former post effective 1 August 1984. Effective 1 August 1984 she was accordingly returned to OUSGPGAA as a Senior Clerk-Typist and her Special Post Allowance was discontinued.

The International Civil Service Commission having, in July 1982, approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels, all General Service posts in New York were classified under procedures set out in Administrative Instruction ST/AI/301 of 10 March 1983. As an outcome of the classification exercise, some posts were upgraded, including the post of editorial assistant previously occupied by the Applicant, which was reclassified at the G-7 level. The procedures for implementation of the results of the exercise were announced to the staff in Annex I of Information Circular ST/IC/86/27 of 28 April 1986. Under paragraph 16 of Annex I, a staff member who had completed the job description used to classify a post but had since been moved to another post could request a special review.

On 13 June 1986, pursuant to paragraph 16 of Annex I of Information Circular ST/IC/86/27, the Applicant wrote to the Assistant Secretary-General for Personnel Services to request a special review of her case. She stated that she had been forced to request to be reassigned to her former clerical post, classified at the G-3 level, because of "long-standing managerial problems" and "unpleasant encounters" with the Chief of Section which had made "working conditions unbearable". She asked to be considered not only for monetary compensation but, most importantly, for possible "relocation to an equivalent post" according to her qualifications. On 13 February 1987 the Applicant reiterated her request for a review of her case in a memorandum addressed to the new Assistant Secretary-General for Personnel Services.

A joint Implementation Review Group was established under Information Circular ST/IC/86/27/Add.2 of 28 August 1986 to conduct the special reviews and the Applicant's case was referred to it. In its report on the Applicant's case, the Group recommended that her request be denied and made the following comments:

> "After passing the Editorial Assistant examination, staff member went on assignment to DCS from April 1983 to August 1984 with an SPA [Special Post Allowance] to G-5. Staff member did not complete the required 2-year trial period and returned to her parent department in August 1984. SPA was discontinued.
>
> Staff member was therefore compensated for her assignment duties at the higher level and no further compensation is justified."

That recommendation was accepted on behalf of the Secretary-General and the Applicant was advised accordingly. On 16 June 1987 she requested a review of the administrative decision in a letter addressed to the Secretary-General in accordance with staff rule 111.2(a). Her request was acknowledged but not acted upon and on 15 December 1987, having received an extension of the time-limit for the filing of an appeal, she lodged an appeal with the Joint Appeals Board.

The Joint Appeals Board submitted its report on 23 June 1988. The Board's conclusions and recommendations read as follows:

> "Conclusions and Recommendations
>
> 34. The Panel concludes that the appellant did not sustain the burden of proof required to establish that she had been subjected to harassment and animosity during her 15-month stay in DCS.
>
> 35. The Panel also concludes, pursuant to staff rule 111.2(j), that a determination that the appellant's present illness is service-incurred was a matter not within its purview, the proper body to deal with it being the ABCC [Advisory Board on Compensation Claims] exercising its jurisdiction in accordance with the provisions of Appendix D to the Staff Rules.
>
> 36. The Panel further concludes that although the provisions of paragraph 16 of Annex I to ST/IC/86/27 apply

to the appellant's case, the appellant was not entitled to additional monetary compensation as she had been compensated for her higher level assignment by means of an SPA.

37. Furthermore, the Panel concludes that there is no basis for crediting the editorial assistant's services which the appellant had rendered in OUSGPGAA towards the completion of her trial period in DCS.

38. Accordingly, the Panel makes no recommendation in support of the appeal."

On 24 June 1988 the Under-Secretary-General for Administration and Management informed the Applicant that, having re-examined her case in the light of the Board's report, the Secretary-General had decided to maintain the contested decision. On 15 December 1989 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Chief of the Official Records Editing Section wilfully violated the Applicant's human rights, Administrative Instruction ST/AI/240/Rev.1 on performance evaluation reports and the Standards of conduct in the international civil service.

2. The Respondent failed to review the Applicant's appeal to the Joint Appeals Board fairly, independently and impartially pursuant to staff rule 111.2(g), thereby causing a miscarriage of justice in her appeal to the Joint Appeals Board.

3. The Joint Appeals Board failed to review the Applicant's appeal fairly, independently and impartially pursuant to staff rule 111.2(m), thereby causing a miscarriage of justice in her appeal to the Joint Appeals Board.

4. The Respondent failed to review the Joint Appeals Board Panel's recommendations fairly, independently and impartially, thereby causing a miscarriage of justice in the Applicant's appeal to the Joint Appeals Board.

5. The Respondent failed to rectify the gross injustices deliberately done to the Applicant since August 1984.

6. The Administration deliberately failed to make regular performance evaluation reports concerning the Applicant.

Whereas the Respondent's principal contentions are:

1. The claim concerning the alleged service-incurred illness is not properly before the Tribunal and should be referred to the Advisory Board on Compensation Claims.

2. No credible evidence has been adduced by the Applicant to establish that she has been subjected to harassment during her 15 months stay in DCS.

3. The Applicant was adequately compensated with a Special Post Allowance to the G-5 level during the period of 15 months when she was assigned on a G-5 post; this allowance had to be discontinued on reassignment to a lower level post.

4. The Applicant's request for reinstatement in a post at G-7 level retroactive from 1 January 1985, or compensation in lieu of such reinstatement, has no legal basis.

The Tribunal, having deliberated from 16 October to 12 November 1991, now pronounces the following judgement:

I. The Tribunal has taken the view that the preliminary measures requested by the Applicant and mainly concerned with the production of documents of various kinds need not be taken, as the information presented or made available to the Tribunal is adequate. For similar reasons, the Tribunal has declined to hold oral proceedings.

II. The Tribunal recalls at the outset that the Applicant requested her transfer out of the Official Records Editing Section by a memorandum dated 16 July 1984, signed by her and sent to Mrs. Del Gaudio, Administrative Officer of the Department of Conference Services. In the Tribunal's view, such a request bearing the signature of the Applicant must be considered the expression of her will unless it can be proved, as claimed by the Applicant, that the memorandum was signed under circumstances that prevented her from acting freely.

III. The Applicant claims that her transfer from the Official Records Editing Section was not voluntary and was brought about by ill-treatment by her supervising officer. In connection with this assertion, many inferences

of devious conduct have been suggested. In particular, much has been said about the Applicant's medical condition while she was working with the Official Records Editing Section, but the Tribunal notes that when the Joint Appeals Board heard the parties in an oral proceeding on 14 June 1988, there was no communication from any of the doctors suggesting that the Applicant's condition at the time of her move from the Official Records Editing Section in mid-1984 was directly due to the atmosphere and circumstances in which she was working. The only statement plainly attributable to Dr. Irwin (Director of the Medical Service of the United Nations) relates to a "request for extension of deadline for submission of appeal to the Secretary of the Joint Appeals Board". Dr. Irwin's comment that "I support Ms. Fallah's request (for medical reasons)" is dated 25 November 1987, i.e. more than three years after the date of the Applicant's transfer from the Official Records Editing Section.

IV. A hand-written certificate from Dr. Peter H. Gruen, a private doctor of the Applicant, came immediately after the Joint Appeals Board's oral proceeding, and it is silent on any advice he may have given to the Applicant that she should leave the Official Records Editing Section in mid-1984 because of health reasons due to the conditions and atmosphere in which she was working. Neither Dr. Irwin nor Dr. Laux (who succeeded Dr. Irwin as Director of the Medical Service) recorded any views about the health condition of the Applicant at the time of her leaving the Official Records Editing Section or about any advice they may have given her. The Applicant has, in her written observations dated 30 June 1991, attached a number of additional certificates from different doctors, but they are all dated long after August 1984. Besides, they do not say categorically that the Applicant was obliged to leave the Official Records Editing Section because of deterioration in her health following "constant harassment, humiliation and intimidation". Furthermore, those relatively recent certificates often relate to short leaves or absences from work, and seem to have been prepared with a view to helping the Applicant in seeking relief or compensation from the United Nations.

V. In the light of the above considerations and given the medical history of the Applicant, the Tribunal holds that, on the basis of available

evidence, it cannot be established that her requested transfer from the Official Records Editing Section was directly due to her deteriorating health condition at that time. The Applicant has not sought the help of the Advisory Board on Compensation Claims for a determination whether, and if so to what extent, her illness in 1983-1984 could be considered service-incurred.

VI. The Applicant also claims that she requested her transfer out of the Official Records Editing Section as a consequence of being subjected to a systematic skein of intrigue, harassment, discrimination and favouritism. She relies heavily on the following two assertions.

First, the Applicant alleges that the only purpose of the two memoranda dated 31 July and 2 August 1984 written by her supervisor, Mrs. Geneviève Vengeon, Chief of the Official Records Editing Section, relating to the recommendation of Mrs. Vengeon to withhold the Applicant's within-grade salary increment, was to intimidate and frighten the Applicant into leaving the Official Records Editing Section. The circumstances surrounding this incident were of special concern to the Tribunal because of apparent inconsistencies with the procedure that would normally be expected. However, the Tribunal was unable to find substantial evidence to support the allegation of intimidation; there is evidence, on the contrary, that the recommendation contained in the 31 July 1984 memorandum was submitted for the reasons indicated in it, but was not acted upon as the Applicant was leaving the Official Records Editing Section.

Secondly, the Applicant states that the draft memorandum dated 16 July 1984, purported to have been prepared by Mrs. Sewell (a former Personnel Officer for the Department of Conference Services), and the final memorandum of the same date, based on the earlier draft and textually identical, were prepared and signed in August 1984, although pre-dated 16 July 1984. Again, there is no satisfactory proof of this charge. Mrs. Sewell has stated in a communication dated 21 October 1991, received by the Tribunal through the Respondent, that she does not "recall ever having drafted a memorandum for Miss Fallah" and she categorically denies that "I ever pre-dated or post- dated any memorandum for or concerning Ms. Fallah in order to accommodate Ms. Vengeon, or for any other reason". The Applicant

contests the statement of Mrs. Sewell. However, the Tribunal finds no reason to believe that Mrs. Sewell acted in collusion with Mrs. Vengeon as has been alleged by the Applicant. The Tribunal holds therefore that all the allegations made about the memoranda sent by Mrs. Vengeon in July/August 1984 and about the "pre-dating" of the memorandum dated 16 July 1984 by Mrs. Sewell have not been substantiated.

VII. The Tribunal has thus examined these particular complaints of ill-treatment cited by the Applicant and finds that, in spite of some indications that the Applicant's tenure with the Official Records Editing Section was not congenial, all the allegations of deliberate wrong-doing to victimize the Applicant remain in the realm of conjecture. The Tribunal notes that the Applicant did not resort to the Panel on Discrimination and Other Grievances which the Joint Appeals Board said was "the most appropriate first body to approach at the time of alleged harassment so that it could set its investigative machinery in motion with a view to making a determination on the merit of the appellant's claims".

VIII. In the circumstances, the Tribunal concludes that the Applicant's request to be transferred out of the Offical Records Editing Section cannot be considered as having been made under duress.

IX. The next set of pleas relates to the Applicant's claim that she was (and is) entitled to have all the rights (including a Special Post Allowance) which she would have enjoyed had she not been transferred out of the Official Records Editing Section. The Applicant states that, even after leaving the Official Records Editing Section, she was entitled to a Special Post Allowance at G-5 as she was substantially and satisfactorily doing the same ype of work as she would have done had she remained in that section.

There is no record to show that, after leaving the Official Records Editing Section, the Applicant ever asked for a Special Post Allowance under staff rule 103.11 on the ground that she was performing duties higher than her job description or grade demanded. The Tribunal finds that the Applicant was not entitled to receive a Special Post Allowance after she moved from the Official Records Editing Section.

X. The Applicant argues that, since her work after leaving the Official Records Editing Section and from time to time resembled what she would have been doing in that section had she remained there, she should be credited with that period for the purposes of the training programme. However, this does not meet the requirements of the training programme. This point was emphasized by the Joint Appeals Board and later explained further in a letter of 7 September 1989 to the Applicant from the Assistant Secretary-General for Human Resources Management. This letter reads in part:

> "The purpose of the two-year training period required by the circular was to prepare successful candidates to assume the very technical functions of editorial assistants by the end of that period. Such training implies a continuous period of learning, which cannot be started, interrupted by more than five years, and completed at the convenience of a trainee."

XI. The Applicant was originally placed with the Official Records Editing Section in accordance with Information Circular ST/IC/80/79 of 28 October 1980 regarding the "Examination for Editorial Assistants" which the Applicant passed. The objective of this examination was "to select a small number of staff members for training and eventual assignment to posts as editorial assistants at the G-5 level in the Official Records Editing Section, Department of Conference Services". This Information Circular indicates that irrespective of what is stated in a notice issued the day before, the intention was to send all successful candidates for training in the Official Records Editing Section for a period of two years with a Special Post Allowance at the G-5 level. On successful completion of a period of training and on being recommended by the Office of Personnel Services, the candidates would be promoted to the G-5 level. The Applicant did not fulfil these conditions.

XII. In view of the nature of the training programme, as indicated by the Respondent, which it must be assumed the Applicant was aware of, she cannot now argue that simply because she was, after August 1984, doing some editorial work, she was entitled to (a) receive a Special Post Allowance, (b) be graded originally as G-5 without completing her training or be

promoted on the basis of a recommendation of the Office of Personnel Services, (c) be classified as G-7 because of the new classification which converted her old post in the Official Records Editing Section from G-5 to G-7, and (d) be given credit in full or in part for the incomplete training in the Official Records Editing Section in 1983-84.

XIII. The Tribunal notes that the Implementation Review Group found that the Applicant was not entitled to receive a Special Post Allowance under the training programme after she moved from the Official Records Editing Section. The Group determined that, while the Applicant's request for a Special Post Allowance should be denied, her request for relocation should be considered by the Career Development and Placement Unit; to date, nothing seems to have come out of such consideration as that Unit might have given to the question of the Applicant's relocation.

XIV. In the circumstances, the pleas of the Applicant for re-classification in order to obtain financial benefits for her work subsequent to her leaving the Official Records Editing Section cannot be sustained.

XV. The Tribunal finds that the procedures and methods followed by the Respondent in implementing the staff regulations and rules in respect of the Applicant were at times casual and at other times contradictory. Thus, no satisfactory explanations are available why regular and timely performance evaluation reports were not prepared, even if it were open to the Applicant to ask for them on her own initiative, as indeed she finally did on 18 June 1991. Similarly, the haste with which the report of the Joint Appeals Board was dealt with ill accords with the subsequent statement recorded by the Respondent that the Applicant's case "involves many factors" which apparently could not be adequately examined during many months before she went to the Joint Appeals Board. Furthermore, the Implementation Review Group recommended that the Applicant's "request for relocation should be considered" by the Career Development and Placement Unit. In the Respondent's reply to the Tribunal's query, it is stated that the two departments which could accommodate the Applicant showed no interest; however, in the background of this case, it appears that attempts made to

relocate the Applicant could be - and the Tribunal hopes would be - pursued more assiduously. Similarly, the absence of a performance evaluation report with respect to the period during which the Applicant worked in the Official Records Editing Section, as well as the related lack of opportunity for the Applicant to invoke the rebuttal procedure if she wished, and the Respondent's failure to place in the Applicant's file Mrs. Vengeon's memorandum of 31 July 1984 suggesting that the Applicant's within-grade salary increment should be withheld, cannot be considered as serving the ends of good administration. Other such instances could be cited.

While these deficiencies do not appear to have materially affected the Applicant's career, the Tribunal considers that the Applicant was nonetheless subjected to moral injury and lack of due process, for which she is entitled to some compensation. The Tribunal assesses this compensation at $ 3,000. However, the Tribunal does not find in this case the elements justifying an award of costs.

XVI. Accordingly, the Tribunal:

1. Orders the Respondent to pay compensation to the Applicant in the amount of $ 3,000.

2. Rejects all other pleas.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Luis de POSADAS MONTERO
Member

New York, 12 November 1991

Jean HARDY
Acting Executive Secretary